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Position paper on the time frame for submissions to the Commission on the Limits of the Continental Shelf

Submitted by Australia, Fiji, Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu

1. The Pacific Island Forum States share a common vision about the importance of ocean space and the resources found within the marine environment. When the United Nations Convention on the Law of the Sea was concluded in 1982, the Pacific Island Forum States were quick to embrace the Convention as being of fundamental importance to their future well-being. The hope that the new ocean regime would create opportunities for the Pacific Island Forum States is not without foundation. No other region is as dependent on the ocean environment as the South Pacific. The small island States of the region are and will continue to be dependent upon the ocean for transportation, economic development (such as the tuna fishery), food and sustenance.

2. In the context of establishing the limits of an extended continental shelf beyond 200 nautical miles, the vast non-living marine resources that are known to occur on and beneath the deep seabed of the Pacific Ocean provide further opportunities that could provide the Pacific Island Forum States with an additional measure of economic independence. The Convention provides a framework for both developed and developing countries to benefit from the resources of the ocean. When the late Arvid Pardo argued that the wealth of the deep seabed should be appropriated as the common heritage of mankind, he was also stating that no one State should be disadvantaged from enjoying the benefits from the oceans on account of its lack of financial and technical resources. The imbalance in resources to take full advantage of the rights and responsibilities and the opportunities in the Convention is well recognized by the international community and by the Convention itself. There are very important provisions contained in the Convention that pertain to transfer of technology to enable developing countries and those with limited capacity to fulfil their obligations under the Convention.

3. Coastal States have inherent rights to a continental shelf. Beyond 200 nautical miles from baselines, coastal States are required to define the limits of any extended continental shelf. The Pacific Island Forum States have for some time expressed concern that their inability to satisfy the technical requirements of compliance with Annex II to the Convention might prejudice their opportunity to establish the limits of an extended continental shelf beyond 200 nautical miles. For such States it may be difficult or impossible even to make a partial submission within the 10-year time frame (so as to enable them to follow up in due course with a complete submission in terms of the Convention). The scientific and technical work that is required to support a submission to the Commission on the Limits of the

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Continental Shelf is highly complex and beyond the capacity of most small island States. This problem is exacerbated by the fact that, in many cases, zones of national jurisdiction, including territorial seas, archipelagic seas and exclusive economic zones, have not been accurately defined. In addition, fixing the limits for some continental shelf areas may involve scientific and technical issues of such complexity that they are unable to be resolved within the 10-year period, irrespective of the financial resources of the State involved. The report of the Tenth Meeting of States Parties states that:

> "The Meeting expressed general support for the concerns voiced regarding the difficulty in complying with the 10-year time limit. It decided to include in its agenda for the eleventh Meeting an item entitled "Issues with respect to article 4 of Annex II to the United Nations Convention on the Law of the Sea" and requested the Secretariat to prepare a background paper." (SPLOS/60, para. 62)

4. The Pacific Island Forum States are pleased to note that the issue has been placed on the agenda of the eleventh Meeting of States Parties. In considering this issue further, the Pacific Island Forum States request the States Parties to note that the Convention did not enter into force until November 1994. Further, under Annex II, the election of members of the Commission on the Limits of the Continental Shelf was to have taken place 18 months from the date of entry into force of the Convention, by July 1996. States Parties will recall that the election of the members was delayed beyond that date and the first meeting of the Commission was not convened until June 1997, three years after the entry into force of the Convention. The Commission did not adopt its Scientific and Technical Guidelines until May 1999.

5. The problems in rendering the Commission fully operational within the time frame envisaged under the Convention have had serious implications for the ability of States to commence preparations for the submission of claims as required under article 76 and Annex II to the Convention. This particularly affects thos States which had demonstrated their support of the Convention through early ratification and for which the 10-year period prescribed in Annex II expires in 2004.

6. The Guidelines adopted by the Commission highlight the complexity of the issues involved in the interpretation and application of article 76 of the Convention. The preparation of a submission requires the consideration of many technical issues, such as the identification of basepoints, the foot of slopes, sediment thickness and the 2,500-metre isobath. This requires the analysis of bathymetric, geological and geophysical data as well as geodetic methodologies. The requirements are difficult for all States to meet, let alone those with limited capacity.

7. It must be recalled that the purpose of the 10-year time period in Annex II was to ensure that the boundaries between areas under national jurisdiction and the deep seabed beyond national jurisdiction (the Area) were resolved in a timely manner to allow for the management activities in the Area in accordance with the Convention. In 1982, the commencement of deep seabed mining appeared to be imminent. In 2001, however, it is clear that seabed mining is unlikely to take place until some time in the future. The practical need to identify the limits of the Area is no longer a matter of such urgency.

8. The Pacific Island Forum States strongly urge the following:

(a) That the States Parties agree to extend the 10-year period prescribed in Annex II; such an extension to be agreed through a decision of the Meeting of States Parties or through an understanding on the interpretation of Annex II;

(b) Such an understanding to include an agreement that the 10-year period would not begin to run for any State Party, regardless of its date of ratification or accession, until the date of adoption of the Commission's Guidelines;

(c) The time for making a submission to be further extended beyond 10 years where a State Party has been unable, for technical reasons, including lack of technical capacity, to comply in good faith with the time limitation.